Supreme Court, U.S.
FILED
DEC 18 1987
JOSEPH F. SPANIOL, JR.
CLERK

87 1012

No. 87-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

FRANKLIN SANDERS,

Petitioner,

v.

CHARLES D. RAGLAND,
ARKANSAS COMMISSIONER OF REVENUES,

Respondent.

On petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit

---

PETITION FOR A WRIT OF CERTIORARI *and* APPENDIX

EDWIN VIEIRA, JR.
13877 Napa Drive
Independent Hill, Virginia 22111
(703) 791-6780

Counsel of Record Pro Bono Publico
for Petitioner Franklin Sanders

QUESTIONS PRESENTED FOR REVIEW

I. Is the State of Arkansas authorized conclusively to determine which of its agents are, or are not, "Officers" for purposes of Article VI, Clause 3 of the United States Constitution and Title 4, United States Code, Section 101; and, if not, is respondent Charles D. Ragland an "office[r]"for those purposes, as a matter of national law, and has his failure to take the "Oath" mandated by Article VI, Clause 3 and Section 101 disabled him from exercising the powers of his purported "Offic[e]" against petitioner Franklin Sanders?

II. Did the Court of Appeals have jurisdiction of Sanders' appeal where he filed his notice of appeal and a motion for a new trial, and the District Court denied the latter motion, before entry of its judgment?

PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS

The caption of this petition names all the parties to the proceeding in the Court of Appeals sought to be reviewed here.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING IN THE COURT OF APPEALS	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION, STATUTE, AND COURT RULE INVOLVED	1
STATEMENT OF THE CASE	2
I. The parties and the underlying controversy	2
II. Proceedings in the District Court	3
III. Proceedings in the Court of Appeals	6
REASONS FOR ALLOWANCE OF THE WRIT	7
I. The rationale on which the District Court held Ragland immune from Article VI, Clause 3 resurrects the most dangerous notion in the long-defunct doctrine of "nullification"	7
II. The rationale on which the Court of Appeals found a "lack of jurisdiction" to hear Sanders' appeal manifestly misconstrues Federal Rule of Appellate Procedure 4 and misapplies this Court's decision in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982)	13

Page

III. Whether the Constitution commands the allegiance of state bureaucrats, or whether those bureaucrats constitute a law unto themselves, is the ultimate issue this case frames — and one which must be settled if constitutional government is to endure in this country 16

CONCLUSION 18

APPENDIX

Opinion of the Court of Appeals of 5 August 1987 ..... 1a

Order of the District Court of 29 August 1986 .... 3a

Order of the Court of Appeals Denying Rehearing of 29 September 1987 ..... 8a

United States Constitution, Article VI, Clause 3 ..... 10a

Title 4, United States Code, § 101 ..... 10a

TABLE OF AUTHORITIES

Cases:	Page
Arkansas Writers' Project v. Ragland, ____U.S.____, 107 S. Ct. 1722 (1987)	2
Cain v. United States, 73 F. Supp. 1019 (N.D. Ill. 1947)	11
Chapman v. Gerard, 341 F. Supp 1170 (D.V.I. 1970), *aff'd*, 456 F.2d 577 (3d Cir. 1972)	11
Griggs v. Provident Consumers Discount Co., 459 U.S. 56 (1982)	13, 15
Heiliger v. City of Shelton, 236 Iowa 146, 18 N.W.2d 182 (1945)	11
Lane County v. Oregon, 74 U.S. (7 Wall.) 71 (1869)	11
Martin v. Smith, 239 Wis. 314, 1 N.W.2d 163 (1941)	11
Meiland v. Cody, 359 Mich. 78, 101 N.W.2d 336 (1960)	11
Metcalf & Eddy v. Mitchell, 269 U.S. 514 (1926)	11
New York Times Co. v. Sullivan, 376 U.S. 254 (1964)	12
In re Olson, 211 Minnesota 114, 300 N.W. 398 (1941)	11
Parker v. Overman, 59 U.S. (18 How.) 137 (1855)	9
State v. Lofthus, 45 N.D. 357, 177 N.W. 755 (1920)	11
Thomas v. Taylor, 42 Miss. 605, *aff'd*, 89 U.S. (22 Wall.) 479 (1874)	9

Table of Authorities Continued

	Page
Thompson v. Butler, 95 U.S. 694 (1877)	3
United States v. Hartwell, 73 U.S. (6 Wall.) 385 (1868)	11
Wetzel v. McNutt, 4 F. Supp. 233 (S.D. Ind. 1933)	11
Yaselli v. Goff, 12 F.2d 396 (2d Cir. 1926), *aff'd*, 275 U.S. 503 (1927)	11
CONSTITUTIONAL PROVISIONS:	
United States Constitution	
Article VI, Clause 2	6,10,16
Article VI, Clause 3	1,3,7,8,10,12,16
Arkansas Constitution, Article 19, Section 20	8
STATUTES:	
United States Code	
4 U.S.C. § 101	1,4,8,10,12
28 U.S.C. § 1332(a)(1)	4
28 U.S.C. § 2101(c)	1
Arkansas Statutes Annotated	
§ 84-1255(b)	5
§ 84- 1703	5
§ 84-1718	2, 12
§ 84-1901 through 84-1949	3
§ 84-4704(a)	2, 11
§ 84-4712	11
§ 84-4712(a)	2
§ 84-4712(b)	2

Table of Authorities Continued

	Page
§ 84-4713	2
§ 84- 4713(b)	10
§ 84-4714	2
§ 84-4714(c)	11
§ 84- 4714(d)	11
§ 84-4723	10
§ 84- 4723(a)	2, 11
§ 84-4723(b)	2, 11
§ 84- 4724	2
1925 Arkansas Acts, No. 88	8
1949 Arkansas Acts, Section 2(43)	5, 6a
Tennessee Code Annotated, Section 2-6-101	3, 4a
COURT RULES:	
United States Supreme Court Rule 20.2	1
Federal Rules of Appellate Procedure	
Rule 4(a)	2
Rule 4(a)(2)	14
Rule 4(a)(4)	13, 14, 15, 2a
Federal Rules of Civil Procedure	
Rule 59	5,13,1a
Rule 59(b)	5

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Franklin Sanders hereby petitions this Court for a writ of certiorari to the Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Court of Appeals' order and opinion, dismissing Sanders' appeal "for lack of jurisdiction", was entered on 5 August 1987, is unreported, and appears in the Appendix hereto (A) at 1a.

The Court of Appeals' order, denying Sanders' petition for rehearing *en banc*, was entered on 29 September 1987, is unreported, and appears in A at 8a.

The order of the United States District Court for the Western District of Tennessee, granting judgment for respondent Charles D. Ragland and rejecting Sanders' constitutional defense, was entered on 29 August 1986, is unreported, and appears in A at 3a.

JURISDICTION

Jurisdiction over this petition obtains under 28 U.S.C. § 2101(c) and Rule 20.2 of the Rules of this Court.

CONSTITUTIONAL PROVISION, STATUTE, AND COURT RULE INVOLVED

Sanders' claims arise under Article VI, Clause 3 of the United States Constitution, 4 U.S.C. § 101, and Federal Rule

of Appellate Procedure 4(a), the relevant texts of which appear in A at 5a.

STATEMENT OF THE CASE

Sanders seeks reversal of the order of the Court of Appeals, dismissing his appeal "for lack of jurisdiction", and of the order of the District Court, filing and permitting to be enforced certain purported "judgments" obtained by Ragland in the Circuit Court of Crittenden County, Arkansas, that Sanders contends are void.

I. The parties and the underlying controversy. Respondent Charles D. Ragland is not unknown to this Court.[1] As Arkansas Commissioner of Revenues he "administer[s] and enforce[s] the provisions of every [Arkansas] tax law", and assesses and "collect[s] all taxes imposed by any [Arkansas] tax law".[2] He exercises sweeping powers of investigation, assessment of taxes, and settlement of claims.[3] In particular, if a taxpayer "fails to pay [a] deficiency assessed", Ragland may "issue to the circuit clerk of any county of [Arkansas] a certificate of indebtedness", which the clerk "shall enter immediately upon the circuit court judgment docket", and which " entry *** shall have the same force and effect as the entry of a judgment" and "constitute the State's lien upon *** property of the taxpayer".[4] And Ragland may himself "institute and prosecute in his name as such all suits *** necessary for the collection of any taxes".[5]

---

[1] *See* Arkansas Writers' Project, Inc. v. Ragland, ____ U.S. ____, 107 S.Ct. 1722 (1987).

[2] Ark. Stat. Ann. §§ 84-4704(a), 84-4712(a), and 84-4712(b).

[3] Ark. Stat. Ann. §§ 84-4714, 84-4713, and 84-4724.

[4] Ark. Stat. Ann. § 84-4723(a). Additionally, "[a]fter entry of the certificate, the circuit clerk shall issue a writ of execution directed to the Commissioner", authorizing the latter to "act in the place of the county sheriffs". Ark. Stat. Ann. § 84-4723(b).

[5] Ark. Stat. Ann. § 84-1718.

Petitioner Franklin Sanders engages in the business of exchanging United States and foreign silver and gold coins for Federal Reserve Notes or bank demand-deposits denominated in United States "dollars" and cashable for Federal Reserve Notes. Sanders treats these transactions as exchanges of money for money, notwithstanding that the circulation of silver and gold coin is significantly less than that of Federal Reserve Notes or bank-deposit "money".[6]

Ragland, however, sought to treat Sanders' transactions as sales of tangible personal property, subject to Arkansas sales tax.[7] Based on recondite legal theories of his own,[8], Ragland "caused to be issued by the State of Arkansas and registered with the Circuit Court at Crittenden County, Arkansas," three 'certificates of indebtedness"; and then, upon non-payment of the "certificates by Sanders, petitioned the Circuit Court of Shelby County, Tennessee, to register them as "foreign judgments",[9] under color of Tennessee law.[10]

II. Proceedings in the District Court. Sanders removed the Shelby County case to the United States District Court for the Western District of Tennessee, on the basis of diversity of citi-

---

[6] In a system of dual currencies (silver and gold coin, on the one hand; and irredeemable paper notes, on the other hand) such as existed from 1862 to 1879 and exists today in this country, Sanders' position that all forms of United States coin and paper currency are equally "money", whatever the level of their respective circulations, is unassailable. *See* Thompson v. Butler, 95 U.S. 694 (1877).

[7] Ark. Stat. Ann. §§ 84-1901 through 84-1949.

[8] *See* Letter of Charles D. Ragland to Franklin Sanders, 14 April 1983, affirming administrative decision applying sales tax to disputed transactions, attached as Exhibit B to Ragland's Response to Petition for Removal, *Ragland v. Sanders*, No. 84-3048- HB (W.D. Tenn.), at 2: "I will not attempt to distinguish the present situation from the numerous cases you have cited, most of which are outdated in terms of current legal thought."

[9] Petition to Register Foreign Judgment, *Ragland v. Sanders*, No. 09544 T.P. Division 8 (Cir. Ct., Shelby County, Tenn., filed 13 November 1984).

[10] Tenn. Code Ann. § 26-6-101 *et seq.*

zenship.[11] He then moved for summary judgment on the ground that the supposed "foreign judgments" are void, because:

> 1. Ragland is an "Office[r]" of the State of Arkansas, within the contemplation of Article VI, Clause 3 of the Constitution of the United States and 4 U.S.C. § 101.
>
> 2. Notwithstanding his character as such "Office[r]", Ragland has not taken the "Oath or Affirmation, to support [the United States] Constitution" required by those laws.[12] And, therefore,
>
> 3. Ragland's failure to take the "Oath or Affirmation" disabled him *ab initio* from exercising any jurisdiction over Sanders as the purported Arkansas Commissioner of Revenues.

In reply, Ragland contended that he "does not qualify as an officer required to take the oath" prescribed by the Constitution and congressional statute, because he is merely "an employee of the State of Arkansas", and "[a]s an employee *** is clearly not an officer".[13]

Denying Sanders' motion for summary judgment, the District Court *sua sponte* ordered the court clerk to "file certificates of [the Crittenden County] final judgments, and proceed with any lawful enforcement executions.[14]" Recognizing that "the question presented by the case is one of first impression" *under the United States Constitution*, the District Court nevertheless held Ragland "not a state officer" because *Arkansas law*

> 1. excludes from the definition of "States officers and employees" all "members of the General Assembly and ap-

---

[11] Under 28 U.S.C. § 1332(a)(1). *See* A at 4a.

[12] Ragland candidly concedes this point of fact.

[13] Response to Petition to Removal, *ante* note 8, at 2-3.

[14] A. at 7a.

pointed members of the various States boards and commissions";[15]

2. makes "the Arkansas Commissioner of Revenues *** a statutory appointee of the Governor of Arkansas";[16] and

3. declares "the intent of the General Assembly that the commissioner of Revenues shall be an employee of the State of Arkansas".[17]

Thus, concluded the court, "it was the express intention of the [Arkansas] legislators that the position of the Commissioner of Revenues be outside the parameters of the oath requir[ed by the United States Constitution]".[18]

The District Court entered this order on 29 August 1986.[19] On 11 September 1986, thirteen days thereafter, Sanders hand-delivered to the court his motion to vacate the judgment and for a new trial under Federal Rule of Civil Procedure 59, together with a motion to allow the filing thereof out of time.[20] On 25 September 1986, believing his Rule 59 motion to be untimely,[21], Sanders filed a notice of appeal.[22] On 9 October 1986, the District Court denied the motion to vacate and for a new trial.[23] And on 3 November 1986, judgment was entered "in compliance with the Order [of] August 29, 1986".[24]

---

[15] *Id.* at 6a, citing Ark. Stat. Ann. § 1255(b).
[16] *Id.* at 6a, citing Ark. Stat. Ann. § 84-1703.
[17] *Id.* at 6a, citing 1949 Ark. Acts § 2(43).
[18] *Id.* at 6a.
[19] Docket No. 21, *Ragland v. Sanders*, Case No. 84-3048-HB (W.D. Tenn.). The need for close scrutiny of these dates will appear in the following discussion of proceedings in the Court of Appeals.
[20] Docket Nos. 22 and 23.
[21] *See* Fed. R. Civ. P. 59(b). At this time, Sanders (a layman) was representing himself without benefit of counsel.
[22] Docket No. 25.
[23] Docket No. 25A.
[24] Docket No. 26.

III. Proceedings in the Court of Appeals. Sanders appealed the District Court's enforcement of Ragland's "final judgments". Avoiding a decision on the merits, however, the Court of appeals held that Sanders' "motion for a new trial was served within 10 days" of the District Court's "decision" of 29 August 1986, "and tolled the appeals period".[25] For this reason, opined the court, Sanders' notice of appeal, "filed before the district court ruled on his [motion for a new trial,] ha[d] no effect"; and his "appeal [had to] be dismissed for lack of jurisdiction due to a premature notice of appeal".[26]

Sanders then petitioned the Court of Appeals to rehear his appeal **en banc**. But that court denied his petition.[27]

This petition followed.

---

[25] A at 2a.

[26] *Id.* at 2a.

[27] *Id.* at 9a.

REASONS FOR ALLOWANCE OF THE WRIT

This case is worthy of review by writ of certiorari for three reasons: *First*, The order of the District Court effectively licenses the States to nullify Article VI, Clause 3 of the United States Constitution, and all congressional statutes implementing it, as far as the required "Oath[s] or Affirmation[s]" of "all *** Officers *** of the several States" are concerned.[28] Thus, that court's order undermines our system of federalism in the most pernicious manner possible, by freeing the subordinate units of state government from manifesting allegiance to the nation's "Constitution, and the Laws of the United States which shall be made in Pursuance thereof".[29]

Second, the disposition of this case by the Court of Appeals rests on a misconstruction of Federal Rule of Appellate Procedure 4 that has unfairly denied Sanders an appellate hearing on his constitutional claim.

And third, the effect of the actions of the District Court and the Court of appeals, taken together, is further to encourage the dangerous drift of our government, away from a constitutional republic where public officials are public servants, towards an omnipotent bureaucratic state in which these servants think themselves, and increasingly act as if they were, the public's masters.

I. The rationale on which the District Court held Ragland immune from Article VI, Clause 3 resurrects the most dangerous notion in the long-defunct doctrine of "nullification".

Fundamentally, the doctrine of "nullification" taught that, notwithstanding their voluntary submission to the strictures of the Constitution, the States retain an inherent power to deny the binding nature of national law on themselves (and, thereby,

---

[28] U.S. Const. art. VI, cl. 3.

[29] U.S. Const. art. VI, cl. 2.

to "nullify" that law) according to their own, idiosyncratic interpretations of the Constitution — leading in the extreme to the exercise of a reserved privilege to secede from the Union and its political- *cum*-legal obligations altogether. Obviously central to the logic of this doctrine is the idea that the allegiance of the States — and, in as much as the states act only through human agents, of their "Officers" — to the Constitution and laws of the United States is somehow conditional, and subject to revocation, or even to withholding in the first instance. This, in essence, is what the District Court has implicitly held Article VI, Clause 3 sanctions, but which cannot possibly be the law if our federal system of government is to survive.

A. That Ragland has not taken the "Oath" mandated by Article VI, Clause 3 and prescribed by 4 U.S.C. § 101 "to support the Constitution of the United States" no one denies. Indeed, Ragland even concedes that he has not taken the oath to "support the Constitution" required by the constitution of Arkansas.[30] Instead, Ragland has taken only the *non*-constitutional oath peculiar to the Arkansas Revenue Department, which binds him in allegiance to that department alone.[31]

Yet, that the "Oath" is mandatory for everyone who qualifies as an "Office[r]" of a State within the contemplation of Article VI, Clause 3 — and that taking that "Oath" is the con-

[30] Ark. const. art. 19, § 20.

[31] 1925 Ark. Acts No. 88 sets out the oath as follows:

I do solemnly swear *** that so long as I am an employee of the office of Commissioner of Revenues, or the State Revenue Department, I will give my entire and undivided time to the work of said Department, and that I will not accept any other employment while in the employ of said Department; nor will I be interested, either directly or indirectly, in any license, permit, nor in any other activities of the Department otherwise than as an employee of the Department, and that I will diligently and impartially execute the duties of my employment, and I will never use any information or influence I may have by reason of my employment, to gain any pecuniary reward for myself, nor disclose such information that may be used by others. So Help Me God.

dition precedent *sine qua non* to exercise of any authority under color of that status — are also beyond denial.[32]

B. Thus, if Ragland is an "Office[r]" within the contemplation of national law (whatever his status may be under Arkansas law), he concededly has not legally entered into the position of Arkansas Commissioner of Revenues; and any purported exercise of the duties of that position by him is without force and effect.

Powerfully instructive, if not controlling, in this situation is *Parker v. Overman*.[33] There, the issue was whether a sheriff's sale of certain land for taxes was not "regula[r]" because "the land was not legally assessed".[34] Ruling the sale invalid, the Court explained that "[a] legal assessment is the foundation of the authority to sell", and that, "[i]n order to qualify the sheriff to fulfil the duties of assessor", a statute of Arkansas required the sheriff "to make and file *** an affidavit", neglecting which "his office shall be deemed vacant" — and his non-action "would vitiate any subsequent proceedings, and put it out of the power of the sheriff to enforce the collection of taxes by a sale of the property".[35] Because "the then sheriff *** did not file his oath as assessor", the Court ruled that "his office of sheriff became *ipso facto* vacated, and any assessment made by him *** was void, and could not be the foundation for a legal sale".[36]

Here, no mere statute of Arkansas commands that Ragland

---

[32] Were there any question of *when* an "Office[r] of a State "Shall be bound by Oath", 4 U.S.C. § 101 provides the conclusive answer: to wit, "*before* he proceeds to execute the duties of his office". (Emphasis supplied.)

The verb "shall", of course, sufficiently imports the mandatory nature of the requirement of both Constitution and statute. See Thomas v. Taylor, 42 Miss. 605, 700-2, *aff'd*, 89 U.S. (22 Wall.) 479 (1874).

[33] 59 U.S. (18 How.) 137 (1855).

[34] *Id.* at 142.

[35] *Id.*

[36] *Id.* at 142-43.

take an "Oath" to the Constitution and laws of the United States "before he proceeds to execute the duties of his office".[37] That requirement derives from national law superseding all Arkansas law.[38] Yet, if the source of controlling law in this case is superior to that in *Parker*, the effect is the same: in *Parker*, failure to take the oath resulted *per* Arkansas statute in the sheriff's "office [being] deemed vacant" thereafter. Here, failure to take the "Oath" results *per* national law in imposition of a disability on the putative office-holder to "procee[d] to execute the duties of his office" *ab initio*. So, if in *Parker* the failure to take the oath "vitiated any subsequent proceedings, and put it out of the power of the sheriff to enforce the collection of taxes", here the same conclusion is inescapable, too: in as much as the supposed "final judgments" of the Crittenden County court rest on "certificates of indebtedness" issued by Ragland in claimed enforcement of a tax-assessment against Sanders,[39] those "judgments" must be void, because beyond Ragland's power to procure.[40]

C. That Ragland *is* an "Office[r]" within the contemplation of Article VI, Clause 3, moreover, escapes rational denial — notwithstanding the District Court's preference of Arkansas over national law on that matter.

The test of public "office" satisfying constitutional requirements is that — in addition to the characteristics of tenure, duration, emolument, and duties fixed by law — *public office involves an exercise of some part of the sovereign power of the*

---

[37] 4 U.S.C. § 101.

[38] U.S. Const. art. VI, cl. 2.

[39] Ark. Stat. Ann §§ 84-4713(b), 84-4723.

[40] The jurisdiction of the clerk of the Crittenden County court to enter the "certificates of indebtedness" with "the same force and effect as the entry of a judgment" obviously rests upon the *real* authority of Ragland, as Commissioner, to "issue" those "certificates" in the first instance. *See* Ark. Stat. Ann. § 84-4723. Because Ragland had no such authority, the clerk's action was not a mere error in the exercise of admitted jurisdiction, but instead participation in Ragland's usurpation of power.

State.[41] One sovereign power of a State, if not the quintessence of its sovereignty, is the power of taxation.[42]

This power Ragland, as Arkansas Commissioner of Revenues, exercises in numerous particulars: he "administer[s] and enforce[s] the provisions of every [Arkansas] tax law", where necessary "promulgat[ing] rules and regulations".[43] He "make[s] *** assessments of all state taxes *** imposed by all State tax laws", and "collect[s] all [such] taxes".[44] He functions as a tax inquisitor, authorized to "administer oaths, conduct hearings, *** compel by summons the attendance of witnesses, testimony, and the production of *** records", and "examine under oath any person regarding the business of any taxpayer".[45] He may "issue *** certificates of indebtedness", which the clerks of Arkansas circuit courts must "enter immediately upon the *** court[s'] judgment docket", and which have "the same force and effect as a judgment".[46] He may "act in the place of the county sheriffs" for the purpose of levying upon property of taxpayers.[47] And he may "institute and pros-

---

[41] *E.g.*, Metcalf & Eddy v. Mitchell, 269 U.S. 514, 519-20 (1926); United States v. Hartwell, 73 U.S. (6 Wall.) 385, 393 (1868); Yaselli v. Goff, 12 F.2d 396, 403-04 (2d Cir. 1926), *aff'd*, 275 U.S. 503 (1927); Chapman v. Gerard, 341 F. Supp. 1170, 1173-74 (D.V.I. 1970), *aff'd*, 456 F.2d 577 (3d Cir. 1972); Cain v. United States, 73 F. Supp. 1019, 1021 (N.D. Ill. 1947); Wetzel v. McNutt, 4 F. Supp. 233, 234 (S.D. Ind. 1933); Meiland v. Cody, 359 Mich. 78, 87, 101 N.W.2d 336, 341 (1960); Heiliger v. City of Sheldon, 236 Iowa 146, 154-55, 18 N.W.2d 182, 187 (1945); Martin v. Smith, 239 Wis. 314, 330, 332-33, 1 N.W.2d 163, 169, 171-72 (1941); *In re* Olson, 211 Minn. 114, 117, 300 N.W. 398, 400 (1941); State v. Lofthus, 45 N.D. 357, 362, 177 N.W. 755, 757 (1920).

[42] *See, e.g.*, Lane County v. Oregon, 74 U.S. (7 Wall.) 71, 79-81 (1869), holding the sovereign power of state taxation superior to the supposed power of Congress to make irredeemable paper currency a "legal tender" for the payment of all "debts".

[43] Ark. Stat. Ann. § 84-4704(a).

[44] Ark. Stat. Ann. § 84-4712.

[45] Ark. Stat. Ann. § 84-4714(c, d).

[46] Ark. Stat. Ann. § 84-4723(a).

[47] Ark. Stat. Ann. § 84-4723(b).

ecute suits *in his name as such*",[48] to enforce "*the State's* lien upon *** property of the taxpayer".[49] In short, his jurisdiction ranges widely over the domains of *quasi*-executive, *quasi*- legislative, and even *quasi*-judicial power. To pretend that an individual occupying a position imbued with such authority is not an "Office[r]" for purposes of Article VI, Clause 3 verges on the preposterous.[50]

Yet such is the holding of the District Court. Amazingly, moreover, its decision turns not on national law, but on mere *Arkansas* statutes.[51] The short rebuttal to this parade of irrelevant citations is that the definition of "Office[r]" for purposes of Article VI, Clause 3 and 4 U.S.C. § 101 has not been left to Arkansas.[52] " '[M]ere labels' of state law" do not control the decisions of national constitutional questions.[53]

In sum, the District Court's order is a burlesque of constitutional adjudication that cannot be suffered because: (i) it imposes a manifest injustice on Sanders; (ii) perpetuates a situation repugnant to Article VI, Clause 3 and 4 U.S.C. § 101 that will doubtlessly be productive of mischief hereafter in

---

[48] Ark. Stat. Ann. § 84-1718 (emphasis supplied).

[49] Ark. Stat. Ann. § 84-4723(a) (emphasis supplied).

[50] Historically, as well as legally: For in the Declaration of Independence, the Founding Fathers explicitly condemned King George III for sending "hither swarms of officers to harass our people, and eat out their substance". The reference, of course, was to royal tax- collectors. That the men who considered this grievance a just cause for separation from and war on Britain might a few years later carelessly exempt tax-collectors from the "Officers" they meant to subordinate to the Constitution is unthinkable.

[51] A at 6a.

[52] For that reason, Sanders can agree with the District Court that the "legislative enactments" to which it refers are presumedly constitutional — to the extent they define the term "officer" for purposes of Arkansas law only. *See* A at 6a. Conversely, to the extent they purport to define the term "officer" for purposes of Article VI, Clause 3, their constitutionality *is* at issue, notwithstanding the District Court's refusal to recognize or grapple with the problem.

[53] New York Times Co. v. Sullivan, 376 U.S. 254, 269 (1964).

other cases; and (iii) encourages a recrudescence of the spirit of "nullification" long thought exorcised from American constitutional jurisprudence.

II. The rationale on which the Court of Appeals found a "lack of jurisdiction to hear Sanders' appeal manifestly misconstrues Federal Rule of Appellate Procedure 4 and misapplies this Court's decision in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).

If the District Court woefully erred in denying Sanders' motion for summary judgment and recognizing Ragland's "final judgments", at least it addressed the constitutional issue presented to it. Even that much cannot be said of the Court of appeals, which evaded its responsibility to hear Sanders' appeal by discovering a "lack of jurisdiction".

According to the Court of Appeals, the relevant sequence of events in the District Court was:[54]

1. "decision" of the District Court, 29 August 1986;
2. Sanders' Rule 59 motion, 11 September 1986;
3. Sanders' notice of appeal, 25 September 1986; and
4. denial of Sanders' Rule 59 motion by the District Court, 8 October 1986.

Because, opined the Court of Appeals, Sanders' Rule 59 motion was timely filed relative to the "decision" of the District Court, but his notice of appeal was filed before the District Court denied the Rule 59 motion, the notice of appeal "ha[d] no effect" under Federal Rule of Appellate Procedure 4(a)(4), as interpreted in *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).[55] This, concluded the court, necessitated that "the appeal be dismissed for lack of jurisdiction due to a premature notice of appeal".[56]

---

[54] A at 2a.
[55] *Id.* at 2a.
[56] *Id.* at 2a.

In a word, the Court of Appeals' reasoning is worthless. Sanders' Rule 59 motion was timely because it was filed "not later than 10 days after the entry of the judgment",[57] which occurred on 3 November 1986. That is, the Rule 59 motion preceded the judgment. *But so did Sanders' notice of appeal.* And, precisely because his notice of appeal was "filed after the announcement of [the District Court's] decision *** but before the entry of [its] judgment", by operation of law under Federal Rule of Appellate Procedure 4(a)(2) that notice was automatically to "be treated as filed after [entry of judgment] and on the day thereof".[58] Or, by operation of Rule 4(a)(2), the sequence of events became:

1. "decision" of the District Court, 29 August 1986;

2. Sanders' Rule 59 motion, 11 September 1986;

3. denial of Sanders' Rule 59 motion by the District Court, 9 October 1986;

4. entry of judgment, 3 November 1986; and

5. Sanders' notice of appeal, treated as filed on 3 November 1986.

Given this sequence of events, Federal Rule of Appellate Procedure 4(a)(4) has no application, as that rule deals with the situation in which a notice of appeal is filed "before the disposition of" a Rule 59 motion.[59] Here a notice of appeal was delivered to the District Court on 25 September 1986 but — *per* operation of Rule 4(a)(2) — only *filed* on 3 November 1986, *after* "the disposition of" Sanders' Rule 59 motion.[60]

---

[57] Fed. R. Civ. P. 59(a).

[58] Fed. R. App. P. 4(a)(2).

[59] Fed. R. App. P. 4(a)(4).

[60] Instructive here is the key operational difference between the requirement of Rule 4(a)(4) that "[a] *new* notice of appeal must be filed", and the mandate of Rule 4(a)(2) that the *original* notice of appeal "shall be treated as filed after [entry of the judgment] and on the day thereof". That is, Rule 4(a)(4) renders the original notice of appeal without effect; whereas Rule 4(a)(2) transfers the effect of the original notice to the date of judgment.

For the same reason, this Court's decision in *Griggs* is not pertinent. For there, the sequence of events was:

1. order of the District Court, 24 December 1980;

2. entry of final judgment, 5 November 1981;

3. Rule 59 motion, 12 November 1981;

4. notice of appeal, 19 November 1981; and

5. decision on Rule 59 motion by the District Court, 23 November 1981.

The notice of appeal in *Griggs* came within the ambit of Rule 4(a)(4) because it was filed after the judgment but between the Rule 59 motion and the decision thereon. In contrast, the notice of appeal here came outside the ambit of Rule 4(a)(4) because it was filed (by operation of Rule 4(a)(2)) simultaneously with the judgment but after the decision on Sanders' Rule 59 motion.

In short, the Court of Appeals completely misconceived the situation before it as one similar to that in *Griggs*, when quite the opposite is true. Had Sanders not filed a petition for rehearing *en banc*, pointing out this elementary error, one could in charity attribute the court's blunder to inadvertence. Given Sanders' petition, however, the more likely — if discreditable — explanation is that the court simply grasped for a rationalization that could excuse, on a specious "jurisdictional" ground, its evasion of the powerful constitutional issue Sanders raised.[6]

This, however, only renders review of the case by writ of certiorari more urgent. Error is one thing; evasion of judicial responsibility another. Sanders is entitled to have his appeal

---

[6] This interpretation also explains the court's decision to relegate its opinion to the limbo of "not recommended for full-text publication" — a seemingly preferred technique these days for hiding opinions the reasoning of which may reach the desired result, but which the authors thereof realize cannot stand the light of scrutiny by the Bar and public.

heard on the merits, no matter how politically embarrassing the matter may be to the State of Arkansas. If his constitutional arguments truly lack merit — a conclusion the District Court's handling of the question hardly supports — , then their demerits should be exposed by discursive legal reasoning, openly published for the country to study. If whatever motives lurk behind the disposition of Sanders' appeal cannot honestly stand public scrutiny, but instead must be camouflaged by contrived "jurisdictional" theories and even then hidden in the archives of unpublished opinions, something is seriously amiss: not only with the personal rectitude of those who can cavalierly consign a case as potentially significant as this to an Orwellian "memory hole", but also and especially with a judicial system that can tolerate such shenanigans.

III. Whether the Constitution commands the allegiance of state bureaucrats, or whether those bureaucrats constitute a law unto themselves, is the ultimate issue this case frames — and one which must be settled if constitutional government is to endure in this country.

Ultimately, at stake in this case is whether "government", in the *constitutional* sense, exists in this country. Under our Constitution, "government" is the sum of the actions of all public servants that consist with the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof".[62] All *other* actions taken under color of "public" authority constitute either usurpation or tyranny. Yet, without the "Oath" of Article VI, Clause 3 "to support this Constitution", public servants are not bound, legally or morally, to its provisions. Instead, they can act in what is actually a *non-* or even *anti-*governmental capacity, perpetrating any usurpation, tyranny, oppression, or outrage under color of "law". Moreover, without strict constitutional definition of who is an "Office[r] *** of the several States", the mandatory "Oath" becomes nugatory

[62] U.S. Const. art. VI, cl. 2.

BEST AVAILA

— for if the States can themselves determine who must take, *or who may avoid taking*, the "Oath", they can set aside Article VI, Clause 3 for every one of their operatives save "the Members of the several State Legislatures", and *pro tanto* excuse themselves from allegiance to and control by the Constitution.

Here, Ragland is functioning, by any rational definition, as an "Office[r]" of Arkansas. Yet he has never taken the "Oath" that is the condition precedent *sine qua non* to the lawful exercise of the authority he purports to wield against Sanders. Sanders is a single, impecunious man, struggling from one tribunal to another in an attempt to secure relief form the high-handed oppression of this "Office[r]" who pretends he is not such where his constitutional disabilities are involved, all the while imperiously acting the part where his powers under Arkansas law are concerned. Sanders' plight, however, is archtypical of that the American people everywhere face: powerlessness and helplessness before nameless, faceless, and personally irresponsible bureaucrats who rule in increasingly open contempt of the Constitution.

The precise issue raised in this case may be one of first impression. But its resolution requires no more than recognition of the constitutional truism that Charles D. Ragland is not above the law — no matter what the State of Arkansas may contrive to insulate him from the strictures of Article VI, Clause 3, and no matter what the District Court and the Court of Appeals may say or refuse to say.

ABLE COPY

CONCLUSION

For the foregoing reasons, this Court should grant Sanders' petition, and issue a write of certiorari to the Court of Appeals.

Respectfully submitted,

EDWIN VIEIRA, JR.
13877 Napa Drive
Independent Hill, Virginia 22111
(703) 791-6780

Counsel of Record Pro Bono Publico
for Petitioner Franklin Sanders

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 86- 6104

CHARLES D. RAGLAND

Plaintiff- Appellee

v.

FRANKLIN SANDERS

Defendant- Appellant

ORDER

FILED
AUG-5 1987

NOT RECOMMENDED FOR FULL TEXT PUBLICATION

Sixth Circuit Rule 24 limits to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.

This notice is to be *prominently* displayed if this decision is reproduced.

Before ENGEL, MERRITT, and KRUPANSKY, Circuit Judges.

This appeal has been referred to this panel of the court pursuant to Rule 9(a), rules of the Sixth Circuit.

A review of the record indicates that the decision of the district court was entered August 29, 1986. A Rule 59, Federal Rules of Civil Procedure, motion to vacate or for a new trial was served on September 11, 1986, and denied by order filed on October 8, 1986. A notice of appeal from the district court decision was filed on September 25, 1986.

The motion for a new trial was served within 10 days as calculated pursuant to Rule 6(a), Federal Rules of Civil Procedure, and tolled the appeals period. Rule 4(a)(4), Federal Rules of Appellate Procedure. The notice of appeal filed before the district court ruled on the time tolling motions has no [2] effect. *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56 (1982).

It is ORDERED that the appeal be dismissed for lack of jurisdiction due to a premature notice of appeal. Rule 9(b)(1), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/JOHN P. HEHMAN
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

No. 84- 3048-H

CHARLES D. RAGLAND
Arkansas Commissioner of Revenues

Plaintiff

v.

FRANKLIN SANDERS

Defendant

FILED
AUG 29, 1986

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND ENFORCING THE JUDGMENT OF THE CIRCUIT COURT OF CRITTENDON COUNTY, ARKANSAS

Before the court is defendant Franklin Sanders' motion for summary judgment in the above referenced case, removed to this Court by the defendant from the Circuit Court of Shelby County, Tennessee. After careful consideration, including a thorough review of the entire record, the Court finds the motion should be denied. Further, after careful consideration the court finds the judgment of the Circuit Court of Crittendon County, Arkansas, is a valid judgment and should therefore be enforced.

[2] BACKGROUND

On November 13, 1984, plaintiff filed the present action in the Circuit Court of Crittendon County, Arkansas. The central dispute was whether the sale of gold and silver by the defendant constituted a sale of tangible personal property as provided under the Arkansas Gross Receipts Act of 1941, Ark. Stat. Ann. Sections 84-1901-1949 (1947).

The record shows the defendant was engaged in the sale of gold and silver in various forms within the state of Arkansas. The record further shows that as of March 28, 1984, the state of Arkansas had issued three "Certificates of Indebtedness" for sales and income tax due from the defendant and that such certificates were registered with the clerk of the Circuit Court of Crittendon County, Arkansas, pursuant to the Arkansas Tax Procedures Act (1979), Ark. Stat. Ann. Sections 84- 4710-4744. Specifically, Sections 84-4710-4744 provide that a "Certificate of Indebtedness" shall have the force and effect of a final judgment.

On November 18, 1984, plaintiff filed "Petition to Register Foreign Judgment" with the Circuit Court of Shelby County, Tennessee, pursuant to Tenn. Code Ann. Sections 26-6-101 - 107. Subsequently, on December 13, 1984, defendant Franklin Sanders filed a "Verified Petition for Removal" with this Court. Currently, defendant Franklin Sanders has made no payment on the judgments.

[3] CONCLUSIONS OF LAW

Jurisdiction

Defendant asserts numerous grounds for jurisdiction in this Court. The Court finds that original jurisdiction lies with the Court on the basis of diversity of citizenship pursuant to 28 U.S.C. Section 1332(a)(1). Section 1332(a)(1) provides in relevant part:

> Section 1332 Diversity of Citizenship; amount in controversy; costs;
>
> (a) The district courts shall have original jurisdiction of all civil actions when the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and is between ***
>
> (1) citizens of different status [sic]; ***

Whereas the present action was asserted by plaintiff Charles D. Ragland, an Arkansas citizen, against defendant Franklin Sanders, a citizen of Tennessee; and whereas the amount in controversy in the present case exceeds the sum of ten thousand dollars ($10,000), this Court asserts jurisdiction.

As to the alternative grounds of jurisdiction asserted by the defendant, the court makes no comment.

Validity of the Arkansas State Court Judgment

Initially the Court notes the question presented by the [4] present case is one of first impression. The gravamen of defendant's position is that no state judgment is valid when such judgment is the result of an action brought by a state official who has not complied with the oath requirements of Article VI, Clause 3 of the United States Constitution. Article VI, Clause 3, in pertinent part, provides:

> The Senators and Representative before mentioned, *** and all executive and judicial officers *** of the several states, shall be bound by oath or affirmation, to support this Constitution ***

The defendant, therefore, maintains the Arkansas State Court judgment is void since the plaintiff has not taken the required oath of allegiance.

While Article VI, Clause 3, of the United States Constitution requires executive and judicial officers of the states to take such an oath, the Court finds the plaintiff Charles D. Ragland,

Commissioner of Revenues, is not a state officer pursuant to Ark. Stat. Ann Sec. 1255(b) (1947). Specifically, Section 1255(b) provides:

> "State officers and employees" means all elected and appointed salaried officials of the State, and their salaried state employees, the salaried officials and salaried employees of all State agencies and institutions and *the salaried employees of all State Boards and commissions, excluding only members of the Generally [sic] Assembly and appointed members of the various State boards and commissions* (emphasis added).

[5] The Court further finds that the Arkansas Commissioner of Revenues is a statutory appointee of the Governor of Arkansas. *See*, Ark. Stat. Ann. Section 84-1703 (1947). It should also be noted that the Arkansas legislators' intent in adopting Section 84-1703 is provided under 1949 Ark. Acts Section 2 (43) which states that:

> "It is hereby declared to be the intent of the General Assembly that *the commissioner of Revenues shall be an employee of the State of Arkansas*." (emphasis added)

Clearly, pursuant to Section 2 (43), it was the express intention of the legislators that the position of the Commissioner of Revenues be outside the parameters of the oath requirement. This legislation further reveals that the legislative body designed the position of Commissioner of Revenue as one of 'employee' rather than 'officer.' Plaintiff, additionally, correctly asserts that as a general principle of law, there is a presumption of constitutionality with regard to the legislative enactments. See, *Phillips v. Giddings*, 278 Ark. 368, 646 S.W. 2d 1 (1983); 16 *Am. Jur. 2d*, Constitutional Law Section 212.

Finally the Court considers the Commissioner of Revenues'

authority to institute suits to collect delinquent taxes. Ark. Stat. Ann. Section 84-1718 provides in relevant part:

> [6] 84-1718. Suits by the commissioner of revenues. — The Commissioner of Revenues shall have the authority to institute and prosecute in his name as such all suits and other proceedings necessary for the collection of any taxes collectible by him and which have become delinquent ***

Here again the intention of the Arkansas legislature is clear. The Commissioner, as provided under Section 84-1718, is authorized and empowered as an employee of the state to institute suits for the collections of delinquent taxes.

Therefore, for the reasons herein stated, there is no justifiable reason why the defendant's motion for summary judgment should be granted. It is therefore denied.

Further the Court finds the judgment of the Circuit Court of Crittendon County, Arkansas to be valid. As such it is ORDERED that the plaintiff be allowed by the Clerk of this Court to file certificates of those final judgments, and proceed with any lawful enforcement executions allowed by law on those judgments.

ENTERED this 29 day of August, 1986.

/s/ ODELL HORTON, JUDGE
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 86- 6104

CHARLES D. RAGLAND
Plaintiff- Appellee

v.

FRANKLIN SANDERS
Defendant- Appellant

ORDER

FILED
SEP 29, 1987

Before ENGEL, MERRITT, and KRUPANSKY, Circuit Judges.

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/JOHN P. HEHMAN
CLERK

UNITED STATES CONSTITUTION
ARTICLE VI, CLAUSE 3

The members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this constitution; ***

TITLE 4, UNITED STATES CODE, § 101

Every member of a State legislature, and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit: 'I, A B, do solemnly swear that I will support the Constitution of the United States.'